

OPTIONS FRAMEWORK FOR
FY 2002 STATE/TRIBAL ENFORCEMENT GRANT PROGRAM
April 30, 2001

The President's FY 2002 budget includes \$25 million for grants to state and tribal environmental enforcement programs. This grant program will benefit the national environmental enforcement program by providing states and tribes much needed funds to enhance their program.

The purpose of this paper is to provide a set of options and highlight policy and implementation issues which should be discussed by EPA, state and tribal agencies, and relevant stakeholders. These discussions are a first step in beginning to design the new grants program.

The options and issues in this paper are a starting point for discussion. Other ideas and options should be raised and discussed. Feedback from the discussions will be used to inform decision making about how funds can be used, how they will be allocated, and the administration of the program.

This paper includes: 1) context and assumptions about the program; 2) options about the use of funds by the states and tribes; 3) options for distribution of funds to the states and tribes; 4) key policy and implementation issues about the grant program; and 5) steps to be taken over the next three months to help design the program. Two attachments provide a review of language about the grant program from FY 2002 budget documents, and a brief description of current federal funding to states and tribes for enforcement and compliance assurance programs.

CONTEXT AND PRELIMINARY ASSUMPTIONS

As discussions begin with states and tribes about program options and issues, it is useful to provide information about the context in which the program is being designed. Attachment 1 provides relevant excerpts from various FY 2002 budget documents that briefly describe the program. Attachment 2 provides a summary of existing EPA grant programs to states and tribes and offers estimates of the extent to which those grant funds are being used to support enforcement and compliance assurance activities.

From the budget documents, it is clear that funds are intended for both states and tribes and that funds can be used for enforcement "and related activities" such as inspections and assistance. From the attached grants information, it is clear that \$25 million is a relatively small percentage of the overall total of existing grant funds provided to tribes and states. It appears that the percentage of existing grant funds used for enforcement programs varies from state-to-state, so the numbers provided in Attachment 2 should be viewed as a rough estimate.

As a result of this context and some initial discussion at EPA, the following preliminary assumptions are offered for discussions with states and tribes:

1.) Eligible Entities. Funds should be available to both states and tribes, and any state agency (e.g., environmental, agricultural, public health) conducting environmental programs delegated by

EPA should be eligible for funds. Further, as is customary with most EPA grant programs, the U.S. Trust Territories and the District of Columbia should also be eligible for funds.

2.) Competitive Awarding of Funds. Given the amount of money available and the number of entities eligible to receive funds, EPA believes funds should be awarded using a competitive process which selects the highest quality proposals from states and tribes. This means that not all states, tribes, and agencies would receive a share of funds in FY 2002. EPA also believes it is important to design the program to allow both large and small states to compete.

3.) Grants to Tribes. The capacity of tribal environmental programs is generally not comparable to state programs, and tribes may not compete well with states for grant funds. For this reason, EPA believes it may be necessary to create a set-aside of funds within which tribes would compete against each other for funds.

4.) Number and Size of Grants to States. Given the amount of money available and the number of eligible state entities, EPA estimates it would award approximately 25-35 grants. Depending upon the number of grants awarded, the amount of the awards would range generally from \$700 thousand to \$1 million. There may be individual grants that would be for amounts below or above that range.

5.) Duration of Program. EPA believes the program should be designed in a manner that will allow the program to function beyond FY 2002 if the President requests and Congress appropriates funds for additional years.

OPTIONS FOR USE OF FUNDS BY STATES AND TRIBES

To provide a framework for discussions with states, tribes, and appropriate stakeholders, three options for the use of funds are described below. Option 1 would allow use of funds to address particular environmental problems through assistance, incentives, inspections, and/or enforcement. Option 2 would allow use of funds for building capacity of state and tribal enforcement and compliance assurance programs. Option 3 would give states and tribes the choice of either problem-based or capacity-building approaches. EPA recognizes that proposals from states and tribes may take more than one year to complete and produce measurable results.

In developing the options, EPA has been guided by three general principles. First, the grants should be performance-based, used to produce meaningful environmental results and outcomes. As a national grant program, it is necessary to build in accountability for use of the funds and demonstrate what was accomplished with them. Second, the grants should provide state flexibility to meet needs and address problems identified by the states and tribes. The program should allow states and tribes to select needs and problems based on their local circumstances. Third, the program should build administrative simplicity into its operation. The process of developing, selecting, and monitoring the grants should be as simple as possible while ensuring

accountability for funds. These principles are used to provide a brief assessment of the options presented below.

Option 1 – Problem-Based Strategies

Funds would be used to address a particular environmental problem of concern to the state or tribe (i.e., a noncompliance pattern or an environmental risk) with a specific strategy that includes measurement of outcomes. The problem would be defined by the state or tribe and could be media-specific, multi-media, based in an industrial sector, targeted toward a single or multiple pollutants, centered in a geographic area, or focused on a disadvantaged community. The strategy would need to describe how assistance, self-auditing incentives, inspections, and enforcement actions would be used individually or in combination to address the problem. The strategy would also include outcome-based measures of performance (e.g., pounds of pollutants reduced, valid rates of compliance, etc.) rather than just a count of activities or outputs produced.

The advantage of this option is that it is most likely to produce environmental results or outcomes, though EPA recognizes that such results might not be complete or measurable for two years or more. The states and tribes are provided flexibility in their selection of the problem and the specific tools used to address the problem. Compared to Option 2 below, this option would be somewhat less simple to administer since review of state or tribal grant proposals by EPA would require analysis of problems, strategies, and measures submitted in the state or tribal proposals.

Option 2 – Capacity Building

Funds would be used for a wide range of activities to improve or expand the capabilities of state and tribal enforcement and compliance assurance programs. For example, funds could be used to improve a program function (e.g., assistance, inspections, enforcement) or a specific element of a delegated media program. Funds could be used to add personnel, obtain specialized expertise or training, or pursue other steps to improve the ability of agencies to carry out enforcement and compliance assurance programs.

This option provides flexibility for states and tribes to identify specific needs and use funds to address them. Tribal governments might find this option especially appealing since many their environmental programs are in developmental stages. This option might also be particularly relevant for program areas where external or internal management reviews have identified weaknesses or areas in need of improvement. Compared to Option 1 above, grants for capacity building are less likely to produce direct environmental results or outcomes, but might be more likely to produce an account of capabilities improved or activities conducted. This option would probably be relatively simple to administer as long as guidance was clear about what services or activities could be supported by these funds.

Option 3 – State/Tribe Chooses Problem-Based or Capacity Building Option

Under this option, an individual state or tribe could choose to submit a proposal for either a problem-based or a capacity building grant.

This option provides maximum flexibility to the states and tribes. The option would produce a mixed set of results – outcomes from states or tribes funded for problem-based strategies, outputs from the states or tribes funded for capacity building. This option could be the least simple to administer since it could necessitate EPA review of two very different categories of proposals.

OPTIONS FOR ALLOCATION OF FUNDS

As mentioned in the “Context and Preliminary Assumptions” section above, while any state or tribe may submit a proposal for funding, only those proposals approved by EPA through a competitive process would receive funds. Therefore, not all states or tribes will receive funds under this program. Three options are presented for how to allocate funds to states and tribes receiving funds.

Option 1 – Proportional Shares

Funds would be allocated to approved proposals by a formula which differentiates among states or tribes on the basis of population or other factors, perhaps dividing states or tribes into categories which would receive a set amount or range of funds. This option would recognize important differences between recipients, but selecting and validating the factors for the formula could be problematic.

Option 2 – Base Share Plus

Under this option, each state or tribe with a proposal approved for funding receives a base or minimum amount, and additional funds are provided based on a formula or the relative merits of the proposals. This approach provides all approved proposals with a base of funds, and could provide an incentive (i.e., additional funds) for states to develop more sophisticated proposals.

Option 3 – Shares Set by Proposal Type

Funds would be allocated based on the type of proposal approved for funding (e.g., capacity building or problem-based). For example, proposals for capacity building activities could receive an amount within one range, while proposals for problem-based strategies could receive an amount within a higher range. This option simplifies decisions about the amount of funds to be awarded to specific proposals and sets expectations about the range of funds a state or tribe can receive.

POLICY AND IMPLEMENTATION ISSUES

There are several policy and implementation issues which need further discussion with state and tribal agencies and relevant stakeholders.

1. **Eligible State Agencies.** Within an individual state, potential recipients of funding could include a range of agencies (e.g., environment, agriculture, health, attorneys general) with environmental enforcement responsibilities. Should an individual state be allowed to submit multiple proposals, or should proposals from more than one agency in a state be submitted as one consolidated proposal?
2. **Tribal Set-Aside.** The capacity of tribal environmental programs is generally not comparable to state programs. There is some concern that tribes will not compete well with states for grant funds. If a tribal set-aside is created, what percentage of the \$25 million should be set aside?
3. **Matching Funds.** Some grant programs require states to match or contribute some percentage of funds to achieve the purpose of the grant. Should states receiving funds be required to provide matching funds, and, if so, what percentage would need to be matched?
4. **Performance Partnership Grants (PPGs).** In recent years, EPA and the states have moved toward the use of PPGs to distribute grant funds in a more consolidated, flexible way. There is some concern that by consolidating the enforcement grant funds as part of the PPG, it could be harder to measure results and outcomes specifically from the enforcement grants. Should states have the option to receive these enforcement grant funds as part of their PPG?
5. **Roles and Responsibilities.** The EPA Regional Offices are likely to have primary responsibility for soliciting, reviewing, and selecting state proposals for funding and provide project officers to oversee individual grant awards. EPA headquarters, in consultation with the Regions, would have primary responsibility for developing the national grant program guidance which will spell out terms and conditions of the program. Is there any other division of roles and responsibilities which EPA should consider?
6. **Time Needed to Prepare Proposals.** Although funds cannot be available until after EPA's FY 2002 appropriations are in place on or about October 1, 2001, draft national grant program guidance could be issued in late June or early July to give states and tribes the opportunity to begin developing grant proposals. Assuming the draft guidance does not differ significantly from the final guidance issued after October 1, how much time will states and tribes need to develop and submit proposals?

NEXT STEPS

The following steps will be carried out over the next three months as Congress considers the FY 2002 appropriations bill which would authorize the grant program.

1. EPA Regional Offices will conduct discussions with state and tribal officials about the options and issues presented in this paper as well as other options and issues raised in the discussions. These discussions should be completed in time for feedback to be provided by Headquarters in the end of May.
2. EPA Headquarters will conduct discussions with relevant state, tribal and other associations to get their views about options and issues. These discussions will also be completed by the end of May.
3. After feedback from states and tribes is received and reviewed, EPA Headquarters will form a senior team including Regional managers to begin drafting the national grant program guidance. The draft guidance could be distributed in late June or early July. The final guidance would be completed in time for its release immediately after approval of EPA's FY 2002 appropriations bill.

Attachment 1

LANGUAGE IN FY 2002 BUDGET DOCUMENTS

The FY 2002 Budget Blueprint released on 2/28/01 includes the following language about the State grant program:

“Currently, the States enforce most environmental laws through delegated State programs. It is estimated that more than 80 percent of environmental enforcement actions and more than 97 percent of environmental inspections are done by the States. An alternative way to supplement State enforcement efforts would be to increase State enforcement grants. Such a transfer would not jeopardize the EPA’s ability to continue enforcement of non-delegated programs or to oversee delegated programs. Further, this would allow States to prioritize their enforcement needs and determine the proper mix between compliance assistance and prosecution.”:

The Appendix to the FY 2002 Budget released on 4/9/01, includes the following language:

“To promote compliance with laws intended to protect human health and the environment, EPA will offer media specific and multi-media funding to States and Tribes for compliance assurance activities including compliance assistance and incentives, inspections and enforcement activities. The Budget provides an additional \$25 million for new enforcement grants to States and Tribes, to assist them in carrying out environmental enforcement activities.”

The proposed language of the Appropriations Bill authorizing the State grant programs states: “...subject to terms and conditions specified by the Administrator, \$25,000,000 shall be for making grants for enforcement and related activities.”

Attachment 2

CURRENT FEDERAL FUNDING FOR STATE/TRIBAL PROGRAMS

Under various federal statutes, states receive funds to carry out delegated program activities.

- > Section 105 of the Clean Air Act (CAA) provides a total of \$208.5 million for state programs, and it is estimated that less than five percent is used for enforcement activities.
- > Under the Clean Water Act (CWA) a total of \$169.9 million is provided for states under Section 106. It is estimated that some states use up to 30% of the funds for enforcement activities.
- > Section 3011 of the Resource Conservation and Recovery Act (RCRA) provides a total of \$106.4 million for state programs, with approximately 40% used for enforcement activities.
- > Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), States receive a total of \$33 million, including \$19.8 million in enforcement grants in FY 2001.
- > Under the Toxic Substances Control Act (TSCA), States received \$5.1 million for enforcement activities in FY 2001.
- > In addition, EPA's Office of Enforcement and Compliance Assurance (OECA) provides \$2.3 million each year for capacity building projects (e.g., improving data systems, developing performance measures) for State enforcement programs.
- > About \$220 million is given to tribes each year for a variety of purposes. Approximately \$60 million of this is given under the General Assistance Program.

Most of these grant programs use allocation formulas based on various combinations of criteria involving the presence of regulated populations, types of sources, or status of environmental conditions in a state. Some programs provide a minimum or base allotment for each state, and some programs provide an additional amount based on a formula or on the merits of individual state proposals.